

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KENNETH DA'VON REYNOLDS,)
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Plaintiff,)
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v.) No. 4:16CV149 JCH
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HARRY RUSSELL, et al.,)
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Defendants.)

MEMORANDUM AND ORDER

Plaintiff, a prisoner, seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983. Having reviewed plaintiff's financial information, the Court assesses a partial initial filing fee of \$10, which is twenty percent of his average monthly balance. *See* 28 U.S.C. § 1915(b).

Standard of Review

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief under § 1983, a complaint must plead more than “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a “mere possibility of misconduct.” *Id.* at 679. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. Determining whether a

complaint states a plausible claim for relief [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679.

The Complaint

Plaintiff brings this action against several officials at the Eastern Reception Diagnostic and Correctional Center (“ERDCC”). He alleges that defendant Ronald Helms slammed his head into a wall while Helms was applying restraints. He also alleges that Helms forced him to the floor and punched him several times. He says that defendant James Rogers helped Helms hold him down during the use of force. And he claims that defendant Unknown Byington was present at the scene and did not protect him. Plaintiff claims that he was not disobeying orders when he was assaulted.

Plaintiff states that defendant Rachael Roessler, who is a nurse, assessed his injuries and took a blood sample. He claims that she did not, however, record his injuries in his medical records and that his medical records state that he had no injuries and refused to cooperate.

Plaintiff seeks to hold defendant Harry Russell liable because he was the Warden at ERDCC at that time.

Discussion

The complaint does not state whether defendants are being sued in their official or individual capacities. Where a “complaint is silent about the capacity in which [plaintiff] is suing defendant, [a district court must] interpret the complaint as including only official-capacity claims.” *Egerdahl v. Hibbing Community College*, 72 F.3d 615, 619 (8th Cir. 1995); *Nix v. Norman*, 879 F.2d 429, 431 (8th Cir. 1989). Naming a

government official in his or her official capacity is the equivalent of naming the government entity that employs the official, in this case the State of Missouri. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). “[N]either a State nor its officials acting in their official capacity are ‘persons’ under § 1983.” *Id.* As a result, the complaint fails to state a claim upon which relief can be granted.

To state a claim for medical mistreatment, plaintiff must plead facts sufficient to indicate a deliberate indifference to serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Camberos v. Branstad*, 73 F.3d 174, 175 (8th Cir. 1995). Allegations of mere negligence in giving or failing to supply medical treatment will not suffice. *Estelle*, 429 U.S. at 106. In order to show deliberate indifference, plaintiff must allege that he suffered objectively serious medical needs and that defendants actually knew of but deliberately disregarded those needs. *Dulany v. Carnahan*, 132 F.3d 1234, 1239 (8th Cir. 1997). Plaintiff does not allege that defendant Roessler disregarded his medical needs. as a result, plaintiff’s Eighth Amendment claim against her fails.

Plaintiff may be attempting to allege that Roessler engaged in a conspiracy to conceal his injuries to support the correctional officers’ version of the incident. To properly plead a claim for civil conspiracy under § 1983, a plaintiff must include factual allegations showing a “meeting of the minds” concerning unconstitutional conduct; although an express agreement between the purported conspirators need not be alleged, there must be something more than the summary allegation of a conspiracy before such a claim can withstand a motion to dismiss. See *Mershon v. Beasely*, 994 F.2d 449, 451 (8th Cir. 1993). Liberally construing the complaint, the Court finds no factual allegations

showing that a meeting of the minds occurred. Additionally, the Court is not aware of a constitutional mandate requiring nurses to correctly record a prisoner's injuries or behavior. This appears to go to negligence, which is not actionable under § 1983. *Estelle*, 429 U.S. at 106.

Plaintiff's claims against Russell do not state a plausible claim for relief. *See Camberos v. Branstad*, 73 F.3d 174, 176 (8th Cir. 1995) ("a general responsibility for supervising the operations of a prison is insufficient to establish the personal involvement required to support liability.").

Because plaintiff is proceeding pro se, the Court will allow plaintiff to file an amended complaint. **Plaintiff is warned that the filing of an amended complaint replaces the original complaint, and so he must include each and every one of his claims in the amended complaint.** *E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). **Any claims from the original complaint that are not included in the amended complaint will be considered abandoned.** *Id.* **Plaintiff must allege how each and every defendant is directly responsible for the alleged harm.** In order to sue defendants in their individual capacities, plaintiff must specifically say so in the complaint. If plaintiff fails to sue defendants in their individual capacities, this action may be subject to dismissal.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff must pay an initial filing fee of \$10 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that plaintiff must file an amended complaint no later than twenty-one days from the date of this Order. If plaintiff fails to comply with this Order, the Court will dismiss this action without further proceedings.

Dated this 9th day of February, 2016.

\s\ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE